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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9
10 **AT SEATTLE**

11 **SCOTT SCHOLZ,**) Case No.
12)
13 Plaintiff,) **COMPLAINT FOR VIOLATION**
14) **OF FEDERAL FAIR DEBT**
15) **COLLECTION PRACTICES ACT**
16)
17 vs.)
18 **J.M. ADJUSTMENT SERVICES,**)
19 **LLC AND NAJAH MANNI,**)
20)
21 Defendants.)
22

23 **NATURE OF ACTION**

24 1. This is an action brought under the Fair Debt Collection Practices
25 Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*
26

27 **JURISDICTION AND VENUE**

28 2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28
U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b),
COMPLAINT FOR VIOLATIONS OF THE FAIR
DEBT COLLECTION PRACTICES ACT-1

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1 where the acts and transactions giving rise to Plaintiff's action occurred in this
2 district, (where Plaintiff resides in this district), and/or where Defendants transact
3 business in this district.
4

5 **PARTIES**

6
7 4. Plaintiff, Scott Scholz ("Plaintiff"), is a natural person who at all
8 relevant times resided in the State of Washington, County of Snohomish, and City
9 of Bellevue.
10

11 5. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

12 6. Defendant, J.M. Adjustment Services, LLC ("JMAS") is an entity
13 who at all relevant times was engaged, by use of the mails and telephone, in the
14 business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C.
15 §1692a(5).
16
17

18 7. JMAS is registered as a "Collection Agency" in the state of
19 Washington. (See License Details, attached hereto as Exhibit "A").
20

21 8. A "Collection Agency" license is defined by the state of Washington
22 as a "[l]icense required to any business that directly or indirectly solicits claims
23 for collection, collects, or attempts to collect claims from Washington State
24 residents." See Definitions, Washington State Department of Licensing,
25 <https://fortress.wa.gov/dol/dolprod/bpdLicenseQuery/lqsDefinitions.aspx?DefCod>
26
27

e=LE5.

9. Defendant, Najah Manni (“Manni”) is an individual who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. §1692a(5).

10. “Employees can be held personally liable under the FDCPA.” *Robinson v. Managed Accounts Receivable Corp.*, 654 F. Supp. 2d 1051, 1059 (C.D. Cal. 2009); see *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1070-71 (E.D. Cal. 2008).

11. Furthermore, “most district courts that have addressed the issue have held that the corporate structure does not insulate shareholders, officers, or directors from personal liability under the FDCPA.” *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1070-71 (E.D. Cal. 2008); see *Kistner v. Law Offices of Michael P. Margelefsky, L.L.C.*, 518 F.3d 433, 437-38 (6th Cir. 2008); *del Campo v. Kennedy*, 491 F. Supp. 2d 891, 903 (N.D.Cal.2006); *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F.Supp.2d 615, 618-21 (D. Utah 2005); *Albanese v. Portnoff Law Assocs., Ltd.*, 301 F. Supp. 2d 389, 400 (E.D. Pa. 2004); *Musso v. Seiders*, 194 F.R.D. 43, 46-47 (D.Conn.1999); *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 861-62 (D. Ariz. 1999); *Pikes v. Riddle*, 38 F. Supp. 2d 639, 640 (N.D. Ill. 1998); *Ditty v. CheckRite, Ltd.*, 973 F. Supp. 1320, 1337-38

(D. Utah 1997); *Newman v. Checkrite Cal., Inc.*, 912 F. Supp. 1354, 1372 (E.D. Cal.1995); *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D. N.Y. 1994).

12. J.M. Adjustment Services, LLC and Najah Manni (“Defendants”) are “debt collectors” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

13. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendants.

14. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendants, arise from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes. Plaintiff incurred the obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendants.

15. Defendants use instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

16. Plaintiff retained counsel to represent him with regard to Bank of

1 America account number 68209002706899, and Plaintiff's counsel sent notice of
2 such representation to Bank of America on or about August 12, 2010, attached
3 hereto as Exhibit "C."

4
5 17. Following Plaintiff's notification to Bank of America that he had
6 retained attorney representation, Bank of America referred the account to
7 Defendants for collection.
8

9
10 18. Subsequently, Defendants sent Plaintiff written communication
11 dated December 20, 2010 for the purpose of collecting an alleged debt with
12 regard to said account, when Defendants knew, or should have known, Plaintiff
13 was represented by counsel, attached hereto as Exhibit "B."

14
15 19. Defendants sent Plaintiff written communication dated December 20,
16 2010 in connection with an attempt to collect an alleged debt, said
17 communication having been specifically designed to induce Plaintiff to make
18 payment toward and/or settle said alleged debt, in which Defendants failed to
19 notify Plaintiff that the communication was from a debt collector.
20
21

22 20. Defendants sent Plaintiff written communication dated December 20,
23 2010 in connection with an attempt to collect an alleged debt, which stated in
24 relevant part, as follows:
25
26
27

1 It is important for you to respond to this letter immediately.

2
3 (See Exhibit "B").

4 In having made such statement, Defendants represented that there was a
5 sense of urgency with regard to its communication that was not, in fact, an urgent
6 matter, and constitutes a misrepresentation specifically designed to induce
7 Plaintiff to make payment toward and/or settle an alleged debt.
8

9
10 21. Defendants' actions constitute conduct highly offensive to a
11 reasonable person.
12

13 **COUNT I**
14 **FDCPA SECTION 1692c(a)(2)**
15 **ALL DEFENDANTS**

16 22. Plaintiff repeats and re-alleges each and every allegation contained
17 in paragraphs 1 through 21.
18

19 23. 15 U.S.C. § 1692c(a)(2) states:

20 Without the prior consent of the consumer given
21 directly to the debt collector or the express permission
22 of a court of competent jurisdiction, a debt collector
23 may not communicate with a consumer in connection
24 with the collection of any debt—

* * *

25 (2) if the debt collector knows the consumer is
26 represented by an attorney with respect to such debt and
27 has knowledge of, or can readily ascertain, such
attorney's name and address, unless the attorney fails to

1 respond within a reasonable period of time to a
2 communication from the debt collector or unless the
3 attorney consents to direct communication with the
4 consumer;

5 24. “[T]o allow a creditor to hire a debt collector after receiving actual
6 knowledge that the consumer has retained legal representation for that debt and
7 then withhold knowledge of this representation from the debt collector would
8 blatantly circumvent the intent of the FDCPA.” *Powers v. Professional Credit*
9 *Services, Inc.*, 107 F. Supp. 2d 166, 168 (N.D.N.Y. 2000).
10

11 25. A creditor’s actual knowledge can be imputed to collection agent
12 “when the creditor has such knowledge and fails to convey it to ... the debt
13 collector.” *Id.* at 169.
14

15 26. “[A] ‘debt collector’ is defined as a third party that assists or acts as
16 an agent for the creditor.” *Catencamp v. Cendant Timeshare Resort Group-*
17 *Consumer Finance, Inc.*, 471 F.3d 780, 781 (7th Cir. 2006); *see also Karnette v.*
18 *Wolpoff & Abramson, L.L.P.*, 444 F.Supp.2d 640, 646 (E.D.Va.2006) (stating a
19 “debt collector may function as an agent for the specific purpose of collecting
20 debts”).
21

22 27. Plaintiff’s counsel sent notice of representation to Bank of America
23 on or about August 12, 2010. (See Exhibit “C”).
24
25
26
27

1 28. Subsequently, Bank of America retained Defendants to collect, or
2 attempt to collect, Plaintiff's alleged debt.

3
4 29. Defendants, through Bank of America, knew that Plaintiff was
5 represented by counsel.

6
7 30. Despite knowledge of Plaintiff's representation by counsel,
8 Defendants sent Plaintiff written communication dated December 20, 2010 for the
9 purpose of collecting an alleged debt. (See Exhibit "B").
10

11 31. Defendants had knowledge of Plaintiff's representation by counsel
12 through Defendants' direct communication with Bank of America.
13

14 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 15 a) Adjudging that Defendant violated 15 U.S.C. § 1692c(a)(2);
16
17 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k,
18 in the amount of \$1,000.00;
19
20 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
21 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
22 this action;
23
24 e) Awarding Plaintiff any pre-judgment and post-judgment interest as
25 may be allowed under the law;
26
27 f) Awarding such other and further relief as the Court may deem just

1 and proper.

2
3 **COUNT II**
4 **FDCPA SECTION 1692e(10)**
5 **ALL DEFENDANTS**

6
7 32. Plaintiff repeats and re-alleges each and every allegation contained
8 in paragraphs 1 through 21.

9
10 33. 15 U.S.C. § 1692e(10) prohibits the “use of any false representation
11 or deceptive means to collect or attempt to collect any debt or to obtain
12 information concerning a consumer.”

13 34. The FTC’s commentary on Section 1692e(10) states:

14 A debt collector may not communicate by a format or
15 envelope that misrepresents the nature, purpose, or
16 urgency of the message. It is a violation to send any
17 communication that conveys to the consumer a false
18 sense of urgency. However, it is usually permissible to
19 send a letter generated by a machine, such as a
20 computer or other printing device. A bona fide contest
21 entry form, which provides a clearly optional location to
22 enter employment information, enclosed with request
23 for payment, is not deceptive.

24
25 FTC Staff Commentary on the FDCPA, 53 Fed. Reg. 50097-50110 (Dec. 13,
26 1988), *available at* <http://ftc.gov/os/statutes/fdcpa/commentary.shtm#807>.

27
28 35. Section 1692e was enacted against a backdrop of cases in which
29 courts held that communications designed to create a false sense of urgency were

1 deceptive. *See, e.g., Trans World Accounts, Inc. v. FTC*, 594 F.2d 212, 215 (9th
2 Cir.1979) (stating it is deceptive to make communications appear to be a telegram
3 which heightened sense of urgency); *Romine v. Diversified Collection Svcs, Inc.*,
4 155 F.3d 1142, 1149 (5th Cir. 1998) (stating that creating a false sense of urgency
5 violates the FDCPA).
6

7
8 36. Post-FDCPA courts have read the language of § 1692e as
9 encompassing this concern. *Rosa v. Gaynor*, 784 F.Supp. 1, 5 (D.Conn.1989)
10 (placing collection letter on attorney's letterhead deceptive where letter is not
11 from attorney because it creates a false sense of urgency).
12

13
14 37. It is widely held that creating a “false sense of urgency” is a
15 deceptive and misleading practice within the meaning of the Act. *Goswami v.*
16 *American Collections Enterprise, Inc.*, 395 F.3d 225, 228 (5th Cir.2004);
17 *Schweizer v. Trans Union Corp.*, 136 F.3d 233, 237 (2nd Cir.1998); *Ozkaya v.*
18 *Telecheck Services, Inc.*, 982 F.Supp. 578, 584 (N.D.Ill.1997)
19

20
21 38. Defendants sent Plaintiff written communication dated December 20,
22 2010 in connection with an attempt to collect an alleged debt, which stated in
23 relevant part, as follows:
24

25
26 It is important for you to respond to this letter immediately.
27

(Exhibit "B").

39. In having made such statement, Defendants represented that there was a sense of urgency with regard to its communication that was not, in fact, an urgent matter, and constitutes a misrepresentation specifically designed to induce Plaintiff to make payment toward and/or settle an alleged debt.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the 15 U.S.C. § 1692e(10);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT III
FDCPA SECTION 1692e(11)
ALL DEFENDANTS

40. Plaintiff repeats and re-alleges each and every allegation contained

1 in paragraphs 1 through 21.

2 41. 15 U.S.C. § 1692e(11) requires a debt collector “to disclose in
3 subsequent communications that the communication is from a debt collector.”
4

5 42. “The provisions of the FDCPA are clear that in initial or subsequent
6 communications, it must be disclosed that the communication is from a debt
7 collector.” *Drossin v. Nat’l Action Financial Services, Inc.*, 641 F. Supp. 2d
8 1314, 1319 (S.D. Fla. 2009).
9
10

11 43. “A collection agent must follow the disclosure requirement of
12 identifying himself as a debt collector in all communications.” *Masciarelli v.*
13 *Richard J. Boudreau & Associates, LLC*, 529 F. Supp. 2d 183, 186 (D. Mass.
14 2007).
15
16

17 44. “[T]he plain language of the statute as it now reads, having been
18 amended, requires a debt collector to identify in subsequent communications that
19 he is a debt collector.” *Winberry v. United Collection Bureau, Inc.*, 692 F. Supp.
20 2d 1279, 1292 (M.D. Ala. 2010).
21

22 45. United States Circuit Courts of Appeals have uniformly rejected
23 contentions that the disclosure requirements of section 1692e(11) do not apply to
24 follow-up communications. *Pipiles v. Credit Bureau of Lockport*, 886 F. 2d 22,
25 26 (2d Cir. 1989) (“[W]e must now address the question left open in Emanuel and
26
27
28

determine whether the Notice, a follow-up communication, was also required to comply. We hold that it was, and therefore rule that Pipiles has established a violation of section 1692e(11).”); *Frey v. Gangwish*, 970 F. 2d 1516, 1520 (6th Cir. 1992) (“follow-up communications are subject to the disclosure requirements of section 1692e(11)”); *Carroll v. Wolpoff & Abramson*, 961 F. 2d 459, 461 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 298 (1992) (holding that follow-up notices are subject to the disclosure requirements of section 1692e(11)); *Dutton v. Wolpoff & Abramson*, 5 F. 3d 649, 654 (3d Cir. 1993) (rejecting *Pressley* because it “changes the clear and unambiguous language ‘all communications’ and substitutes the more limited phrase ‘some communications.’”).

46. Defendants sent Plaintiff written communication dated December 20, 2010 in connection with an attempt to collect an alleged debt. (Exhibit “B”).

47. Defendants December 20, 2010 communication, having been specifically designed to induce Plaintiff to make payment toward and/or settle an alleged debt, failed to notify Plaintiff that the communication was from a debt collector. (See Exhibit “B”).

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(11);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k,

1 in the amount of \$1,000.00;

2 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;

3
4 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
5 this action;

6
7 e) Awarding Plaintiff any pre-judgment and post-judgment interest as
8 may be allowed under the law;

9
10 f) Awarding such other and further relief as the Court may deem just
11 and proper.

12 **TRIAL BY JURY**

13
14 Plaintiff is entitled to and hereby demands a trial by jury.

15
16 Respectfully submitted this 27th Day of April, 2011.

17
18 s/Jon N. Robbins
19 Jon N. Robbins
20 WEISBERG & MEYERS, LLC
21 Attorney for Plaintiff
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23
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25
26
27